

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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BELLA ZUZEL		:	
	Plaintiff	:	
	v.	:	CIVIL ACTION
SEPTA		:	No. 19-268
and		:	
CARDINAL HEALTH,		:	
and		:	
MEDLINE INDUSTRIES, INC.		:	
	Defendants	:	
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ORDER

AND NOW, this _____ day of _____, 2019, in consideration of Defendant SEPTA’s Motion to Dismiss Plaintiff’s Complaint without Prejudice and considering any response thereto, it is **ORDERED** that:

SEPTA’s Motion is **GRANTED**.

It is further **ORDERED** that Plaintiff’s Complaint is **DISMISSED** without Prejudice to file an Amended Complaint in conformity with the Federal Rules of Civil Procedure within Twenty (20) days of this Order.

BY THE COURT:

J.

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	v.	:	CIVIL ACTION
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MEDLINE INDUSTRIES, INC.		:	
	Defendants	:	
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**DEFENDANT SEPTA’S MOTION TO
DISMISS PLAINTIFF’S COMPLAINT WITHOUT PREJUDICE**

Pursuant to Federal Rules of Civil Procedure 20 and 21, Defendant Southeastern Pennsylvania Transportation Authority ("SEPTA") moves to Dismiss Plaintiff’s Complaint without Prejudice. In support of said Motion, moving defendant incorporates by reference the attached Memorandum of Law as though set forth in full herein.

Respectfully submitted

By: **Mark E. Gottlieb**
Mark E. Gottlieb
*Attorney for Southeastern Pennsylvania
Transportation Authority*

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CARDINAL HEALTH,	:	
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MEDLINE INDUSTRIES, INC.	:	
Defendants	:	

**DEFENDANT SEPTAS MEMORANDUM OF LAW IN SUPPORT OF
MOTION TO DISMISS PLAINTIFF’S COMPLAINT WITHOUT PREJUDICE**

Defendant Southeastern Pennsylvania Transportation Authority (“SEPTA”), by and through its undersigned counsel, hereby submit this memorandum of law in support of its Motion to Dismiss Plaintiff’s Complaint without Prejudice.

I. FACTUAL AND PROCEDURAL BACKGROUND

A. The Factual Claims in Plaintiff’s Complaint

On November 19, 2018, Plaintiff Bella Zuzel filed a Complaint in the Philadelphia Court of Common Pleas asserting claims against Defendants SEPTA, Cardinal Health (“Cardinal”) and Medline Industries, Inc. (“Medline”).

The single Complaint contains multiple, disparate claims against the various defendants from three separate incidents as set forth below.

1. November 25, 2016 Subway Incident

Plaintiff claims that on November 25, 2016 she was injured while attempting to exit a subway car on SEPTA’s Broad Street Line at the Cecil B. Moore station in Philadelphia. (See Compl. ¶5.) She alleges that the wheel of her Rollator, which was distributed, manufactured and

supplied by defendant Cardinal, became lodged in the gap between the train and the platform.

(Id.) She alleges the Rollator broke, causing her to fall and resulting in injury to her right knee.

(Id.)

2. January 16, 2018 Sidewalk Incident

In the Complaint Plaintiff also claims that, more than one year after the November 25, 2016 incident, she was injured on January 16, 2018 as she was walking on the sidewalk on Ludlow Street in Philadelphia. (See Compl. ¶7.) She was using a Medline Guardian Rollator at the time. (Id.) Plaintiff claims that the wheel of the Guardian Rollator broke, causing her to fall and resulting in an injury to her left knee. (Id.)

3. April 15, 2018 Bus Incident

Lastly, Plaintiff claims that on April 15, 2018, she was injured on a SEPTA bus after boarding. (See Compl. ¶8.) Specifically, she claims that she fell when the bus unreasonably moved before she had a reasonable opportunity to secure herself and her belongings.

B. The Claims Against the Defendants Arising from the Three Incidents

As a result of these three incidents, Plaintiff sets forth five Counts in the Complaint.

In Count I Plaintiff alleges negligence against all defendants.

In Count II Plaintiff alleges strict product liability (failure to warn) against defendants Cardinal and Medline.

In Count III Plaintiff alleges strict product liability (defective design and manufacture) against defendants Cardinal and Medline.

In Count IV Plaintiff alleges breach of warranty against defendants Cardinal and Medline.

In Count V Plaintiff alleges failure to comply with the Americans with Disability Act against SEPTA.

In each of the five Counts Plaintiff seeks identical relief, namely, “judgment against defendants in an amount in excess of Fifty Thousand (\$50,000.00) Dollars together with interest, costs, and attorney’s fees and any other relief deemed appropriate by this court.”

C. Removal to Federal Court

On January 18, 2019, SEPTA removed this matter Federal Court on the basis that Plaintiff claimed violation of the Americans with Disabilities Act.

II. LEGAL STANDARD

As set forth in herein, Plaintiff’s Complaint violates the Federal Rules of Civil Procedure Joinder Rules.

Defendant SEPTA seeks dismissal of the entire Complaint without prejudice with the opportunity for Plaintiff to file an Amended Complaint in conformity with the rules.

Federal Rule of Civil Procedure 18 (Joinder of Claims) addressed the claims that may be asserted against a particular party in one action, stating:

- (a) In General. A party asserting a claim, counterclaim, crossclaim, or third-party claim may join, as independent or alternative claims, as many claims as it has against an opposing party.

Federal Rule of Civil Procedure 20 (Permissive Joinder of Parties), addresses the parties that may be joined in a single action:

- (2) Defendants. Persons--as well as a vessel, cargo, or other property subject to admiralty process in rem--may be joined in one action as defendants if:
 - (A) any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences; and
 - (B) any question of law or fact common to all defendants will arise in the action.

Where a plaintiff has misjoined parties and/or actions, courts typically do not dismiss a suit altogether with prejudice. Rather, the Third Circuit has instructed remedial options which include: (1) dismissing misjoined parties “on such terms as are just”; (2) severing claims against misjoined parties to allow those claims to proceed separately; and (3) dismissing entire complaint and requiring plaintiff to file separate complaints relating to what appear to be factually distinct claims appropriate under the Federal pleading rules. DirectTV v. Leto, 467 F.3d 842, 845 (3rd Cir. 2006) (citing Fed.R.Civ.P. 21) (citing Rule 21, stating that “[t]o remedy misjoinder, then, a court may not simply dismiss a suit altogether. Instead, the court has two remedial options: (1) misjoined parties may be dropped “on such terms as are just”; or (2) any claims against misjoined parties “may be severed and proceeded with separately.”); Boretsky v. Governor of New Jersey, 433 Fed.Appx. 73, 77 (3d Cir. 2011) (affirming lower court action dismissing complaint without prejudice with leave to file amended complaint); Saltalamacchia v. Wentzel, 2016 WL 5844330 (M.D. Pa. 2016)(granting defendants motion to dismiss for failure to state a claim upon which relief can be granted and for violations of Federal Rule of Civil Procedure 20, dismissing entire complaint in part due to misjoinder under Rule 20, allowing thirty days to file amended complaint that complies with rules).

III. PLAINTIFF HAS MISJOINED PARTIES IN VIOLATION OF RULE 20

Misjoinder was recently addressed in the Eastern District by Judge Slomsky in Garcia v. Brock-Weinstein, 2014 WL 2957487 (E.D. Pa. 2014). In Garcia, plaintiff brought suit against different defendants for bodily injury arising from two separate automobile accidents. Defendants filed a Motion to Sever Based on Misjoinder Pursuant to Federal Rule of Civil Procedure 21.

Reviewing the misjoinder issue in Garcia, the Court wrote as follows:

[C]ourts have construed Rule 20(a) as establishing a two-part test, both parts of which are required for joinder to be permitted. “First, claims brought against defendants to be joined must stem from the same transaction of occurrence, and, second, they must share a common question of law or fact.” Emmanouil v. Roggio, No. 06–1068, 2007 WL 1174876, *4 (D.N.J. Apr.19, 2007). Notably, “Rule 20(a)’s purpose is to promote trial convenience and expedite the final determination of disputes, thereby preventing multiple law suits.” Al Daraji v. Monica, No. 07–1749, 2007 WL 2994608, at *10 (E.D.Pa. Oct.21, 2007) (quotations omitted).

The first element of Rule 20(a), the “same transaction” prong, refers to “the similarity in the factual background of the relevant claims.” Cooper, 266 F.R.D. at 88. “Courts generally apply a case-by-case approach when considering whether the facts of several claims constitute a single transaction or occurrence, or a series of transactions or occurrences.” Lopez v. City of Irvington, No. 05–5323, 2008 WL 565776, at *2 (D.N.J. Feb.28, 2008) (quotations omitted). “Transaction is a word of flexible meaning, which may comprehend a series of many occurrences, depending not so much upon the immediateness of their connection, as upon their logical relationship.” Al Daraji, 2007 WL 2994608 at *8 (quotations omitted). “ ‘Series’ of transactions or occurrences, for purposes of the rule governing misjoinder, means some connection or logical relationship between various transactions or occurrences. The thing which makes the relationship ‘logical’ is some nucleus of operative facts or law-the second prong of the 20(a) test.” Hanley v. First Investors Corp., 151 F.R.D. 76, 79 (E.D.Tex.1993).

Garcia, *2.

Applying this test, the Garcia Court found that the two car accidents did not arise from the same series of transactions or occurrences because each accident involved different defendants and occurred in different places and at different times. In addition, no common question of fact affects the liability of defendants. Rather, separate evidence would need to be adduced for each accident with liability considered separately.

Finding misjoinder, the Garcia Court granted the Motion to Sever and split the claims into two separate actions.

Here Plaintiff has alleged damages arising from three separate incidents

First, Plaintiff asserts claims against SEPTA and Cardinal from the November 25, 2016 fall on the Broad Street subway. It appears that Plaintiff's ADA claim is based on this incident.

Second, her claim arising from the January 16, 2018, fall on the sidewalk is solely against defendant Medline.

Third, the April 15, 2018 fall on the bus is solely against SEPTA.

As in Garcia, supra, clearly Plaintiff has misjoined defendants in this action in contravention of Rule 20.

First, the claims against SEPTA, Cardinal and Medline do not all stem from the same transaction of occurrence. Rather, the three incidents are separate and distinct and bear no factual relationship to one another. Plaintiff blames the first instance on the gap in the platform and a defective product, the second instance on a defective product, and the third instance on the unreasonable movement of the bus.

Second, the claims do not share a common question of law or fact. The claims have no logical relationship to each other and bear no connection. Rather, the only connection between the three instances is the common nucleus that Plaintiff claims to have been injured.

In light of the foregoing, as currently configured, Plaintiff's Complaint cannot move forward.

As noted above, this Court has discretion as to how it elects to treat Plaintiff's Complaint. This Court may sever Plaintiff's claims into separate actions. This Court could likewise sever and dismiss some of Plaintiff's claims, while preserving the claims against SEPTA and Cardinal, from which the ADA claim arises. However, for purposes of orderly pleading and procedure moving forward, SEPTA requests an Order dismissing Plaintiff's Complaint without prejudice

and permitting Plaintiff to file an Amended Complaint in conformity with the Federal Rules of Civil Procedure.

IV. CONCLUSION

For the foregoing reasons, Defendant respectfully requests that the Court Dismiss Plaintiff's Complaint without Prejudice as set forth in the proposed Order of Court.

Respectfully submitted,

By: /s/ Mark E. Gottlieb
Mark E. Gottlieb
*Attorney for Southeastern Pennsylvania
Transportation Authority*